

Application No. 10/675,577

Amendment dated July 10, 2008

In Response to the Office Action Mailed January 10, 2008

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REMARKS

This amendment is in response to the Office Action mailed January 10, 2008. After entry of this amendment, Claims 1-49 and 92-103 are pending. Claim 1 has been amended. The amendment is supported at least by paragraph 0034. Claim 27 has been amended to return the scope to that of the originally elected species, and recite that the outer portion has no appreciable amount of aerosol forming material, as supported at paragraph 0034 of the specification. Independent Claims 92 and 98 have been added and are supported by the specification at least at paragraph 0078. New Claims 93-97 and 99-103 have been added and are supported by the specification at least at paragraph 0066 and original claims 76-78.

The Examiner has indicated that the prior amendment to claim 27 redirected the claims 27-49 to a non-elected species. Accordingly, claims 27 has been amended back to its original species I where the “outer portion comprising a burn suppressing agent such that the degree of burn suppression in the outer portion is higher than the degree of burn suppression in the core portion. Accordingly, the Applicants submit that the claims should no longer be withdrawn, and ask that they be examined.

Defective Oath/Declaration

Applicants recognize this rejection in the Office Action mailed January 10, 2008. Applicants respectfully submit that the Notice subsequently signed by the Director on January 22, 2008 entitled, “Duty of Disclosure Language Set Forth in Oaths or Declarations Filed in Nonprovisional Patent Applications” waives this rejection because the previously submitted declaration references the duty to disclose as defined in 37 CFR 1.56(a). (See page 2, second paragraph, of the Notice). Applicant requests this rejection be withdrawn in view of this Notice.

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Rejections Under 35 USC § 103

Claims 1-26 were rejected as being unpatentable over the combination of Luke et al (US 5,983,901) in view of Jakob et al. (US 5,101,839) and Mattina Jr. et al (US 4,489,739).

Claims 1 and 27 have been amended to recite that there is aerosol forming material in one of the outer portion or core portion, and no appreciable amount of aerosol forming material in the respective other of the outer or core portion. Neither Luke, nor Jakob nor Mattina teach that aerosol forming material should be directed exclusively in one portion or the other portion of the cigarette as recited. The rejection relies on Jakob for teaching the use of an aerosol forming material, and Jakob provides no teaching that suggests or makes obvious the use of the aerosol forming agent in just one of the core portion or the outer portion of a concentric cigarette such as taught by Luke. Mattina is also silent in this regard. Therefore, the cited prior art fails to render obvious the independent claims 1 or 27, and their respective dependent claims. The rejection should be withdrawn.

New Claims

New claims 92 and 98 further recite that the outer portion and the core portion have different packing densities in the ranges as recited. In particular, the claims recite that the outer portion density is greater than the core portion density. Neither Luke, nor Jakob nor Mattina teach the specific ranges of the different densities for the core portion and outer portion as presently recited. Luke indicates at column 4, line 40, that the core should be a foamed extrudate having a low packing density, but fails to specify what that density is. In the background section at col. 1, lines 32-33, Luke discloses a packing density between 150 mg/cm³ and 350 mg/cm³, but suggests at col. 1, lines 44-45, that “[l]ower density packing levels of the annulus of conventional tobacco material can thus be obtained.” Further, Luke discloses at col. 12, lines 16-19, that a “low density tobacco annulus may surround the coiled

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core." Applicants submit that these disclosures in Luke teach away from new claims 92 and 97. Therefore, applicants submit that these claims are patentable over the combination of Luke Jakob and Mattina.

The other new claims 93-97 and 99-103 recite additional preferred ranges of amounts of aerosol forming materials in the portions of the rods. The recited ranges and relative amounts between different portions of the rods are not obvious in view of the cited references.

Conclusion

Based on the above amendments and remarks, the Applicant submits that the claims are in condition for allowance. The examiner is kindly invited to contact the undersigned attorney to expedite allowance.

Respectfully submitted,



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